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Margit -- got your call -- i'll track down the article from the Stockton Record.

Here is some additional information from our D.C. staff. Hope this helps. ERIK VINK

In Bormann v Board of Supervisors (584 N.W.2d 309), decided September 23, 1998, the Iowa Supreme Court declared that state's right to farm law to be an unconstitutional "taking" of private property because the law immunizes farmers against nuisance suits by neighbors. The law, said the court, in effect creates an easement over the neighbors' property by legitimizing the effects of farm odors, dust, noise, etc. The court said, "The challenged statutory scheme amounts to a commandeering of valuable property rights without compensating the owners, sacrificing those rights for the economic advantage of a few." In what could prove to be an understatement, the court added, "We recognize that political and economic fallout from our holding will be substantial." On February 22, 1999, the U.S. Supreme Court let the decision stand by denying certiorari, despite the opposition of farm groups who filed an amicus brief. This addresses some of the most important questions raised by Bormann.

Does the case leave farmers more vulnerable to litigation that could result in liability or close down their operations?

Not really. First, the case only applies to farms in Iowa where it originated. The fact that the U.S. Supreme Court allowed the decision of the Iowa Supreme Court to stand does not create a precedent in other states. However, the U.S. decision does send a signal that it will not interfere with similar rulings in other states.

Second, right to farm laws really don't offer farmers much protection. They contain many loopholes that the courts have generally interpreted in favor of homeowners. For example, under a right to farm law that offered protection only to farming operations that pre-exist neighboring homes, one court defined "farming operation" as the specific set of practices that were being used when the home next door was built; thus, it ruled that protection ends with any change in farming practices - and these cases almost always arise when practices change.

Third, a new generation of right to farm laws, pioneered by California, may better survive court challenge because they call for explicit warnings, in deeds and real estate contracts, to people moving to rural areas that they must be prepared to put up with nuisance-like farming activities. As a matter of legal principle, homeowners thus assume the risk of locating near farms, and assumption of risk is a defense to nuisance. These new laws could arguably get around the ruling in Bormann that an easement is created by nuisance immunity. The U.S. Supreme Court has said, e.g., in Lucas, that there can be no taking when the landowner had no right in the first place. Providing actual notice of nuisance-like conditions to prospective purchasers of rural homes could bar them from claiming that they have a right to be free of such conditions; as the Iowa court in Bormann might have to acknowledge, the easement was already on the property when it was purchased.

Finally, it bears mentioning that right to farm laws do not protect farmers against vandalism, theft and other forms of harassment that they experience when they have too many neighbors.

Does the case affect "takings" law in a way that could discourage government environmental and land use regulation?

Probably not. The Iowa decision turned on whether the government action, in this case a law immunizing farm nuisances, was a "physical invasion" of property, which is only one branch of regulatory takings, the other being when regulation destroys all value of the land. Forcing homeowners to put up with things like manure odors was held to be not unlike flooding their land with a dam or flying military aircraft directly overhead. The court did not address the issue of whether all value of the property was destroyed, which is the basis for most "takings" litigation aimed at land use regulation.

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